WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SEAN SHOFFIT, *Applicant*

vs.

ROGERS BLUE JAYS BASEBALL PARTNERSHIP; ACE AMERICAN INSURANCE COMPANY, ADMINISTERED BY SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ12133512; ADJ13034023; ADJ13034024; ADJ13035034
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Defendant[1] contends that applicant's claim is barred by the statute of limitations of Labor Code[2] sections 5405 and 5405.[3] (Petition for Reconsideration (Petition), June 23, 2023, at p. 5:20.) Defendant acknowledges the WCJ's determination that applicant's testimony was fully credible, and that applicant testified that he did not became aware of his rights to file a cumulative injury claim in California until years after the end of his career. Defendant asserts that, "[w]hile it may be true that this is when the applicant first believes he knew, it was not when he was first informed

[1] Defendant is specially appearing in these proceedings. (Minutes of Hearing, May 11, 2023, p. 1:19.) Defendant has denied liability herein, averring California lacks both subject matter and personal jurisdiction over applicant's claims. (Answer to Application for Adjudication, August 22, 2019, p. 9.) The issues of personal and/or subject matter jurisdiction were not raised at trial or decided in the June 6, 2023 Findings and Award. (Minutes of Hearing, May 11, 2023, p. 2:25.)

[2] All further statutory references are to the Labor Code unless otherwise stated.

[3] Although applicant has filed a cumulative injury claim, neither the issue of injury arising out of and in the course of employment (AOE/COE) or the corresponding date of injury pursuant to Labor Code section 5412 have been decided herein. (Minutes of Hearing, May 11, 2023, p. 2:25.)

about his rights under California workers' compensation, or that he may have suffered cumulative trauma." (Petition, at 11:7.)

However, the WCJ determined that the general notices provided by the employer regarding workers' compensation claims were not equivalent to actual knowledge of the existence of a cumulative injury and the right to file a corresponding claim in California. The WCJ's report observes:

> The court in *Reynolds v. Workers' Comp. Appeals Bd.* (Cal. Nov. 4, 1974), 12 Cal. 3d 726, 117 Cal. Rptr. 79, 527 P.2d 631, 1974 Cal. LEXIS 259 made clear the purpose of California workers' compensation notice is to protect and preserve the rights of an injured employee who may be ignorant of the procedures or, indeed, the very existence of the workmen's compensation law. Since the employer is generally in a better position to be aware of the employee's rights, it is proper that it should be charged with the responsibility of notifying the employee that there is a possibility he may have a claim for workmen's compensation benefits. Id. 12 Cal. 3d 726, 729.
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> Mr. Shoffit did not receive sufficient notice to protect and preserve his rights as an injured California employee who was ignorant of the procedures and the very existence of the California workers' compensation laws affording him jurisdiction over those injuries. Retention of Florida counsel and a Florida settlement do not abrogate the California Supreme Court legal standard of notice or recognition of its purpose(s).
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> (Report and Recommendation on Petition for Reconsideration, June 27, 2023, at p. 5.)

We agree with the WCJ's determination that the various notices provided by the employer were insufficient to meaningfully inform applicant of his right to pursue a claim of cumulative injury in California. Moreover, the record reflects no medical advice to the applicant as to the existence of a cumulative injury prior to the filing of the instant cumulative injury claim. We also agree that applicant's settlement of a separate injury in Florida was insufficient to provide him actual knowledge of his right to file a cumulative injury claim in California. Finally, we accord to the WCJ's credibility determinations the great weight to which they are entitled, because of the WCJ's "opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand …." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) We therefore concur with the WCJ's conclusion that applicant's claim is not barred under sections 5404 and 5405.

In addition, we note that the California Court of Appeal has described the doctrine of res judicata as having a double aspect:

> [I]t precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction, [and] '[a]ny issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action.' [Citation omitted.] The latter aspect of the doctrine is known as collateral estoppel.
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> (*Solari v. Atlas-Universal Service* (1963) 215 Cal.App.2d 587, 592 [28 Cal.Comp.Cases 277, 278].)

Here, defendant avers applicant's February 17, 2014 settlement of a Florida workers' Compensation claim would preclude applicant's present claims filed in California under the doctrines of res judicata and collateral estoppel. The WCJ determined, however, that the 2014 settlement as between the defendant and applicant was not "actually litigated." (*County of Sacramento Sheriff's Dept. v. Workers' Comp. Appeals Bd.* (*Keillor*) (2021) 86 Cal.Comp.Cases 845 [2021 Cal. Wrk. Comp. LEXIS 29]; *Le Parc Cmty. Ass'n v. Workers' Comp. Appeals Bd.* (*Curren*) (2003) 110 Cal. App. 4th 1161, 1174-1175 [68 Cal.Comp.Cases 1041, 1051] (collateral estoppel inapplicable where civil action is dismissed pursuant to settlement, because nothing was "actually litigated" or "necessarily decided").) Because the claims herein were not previously litigated or decided, we concur with the WCJ's determination that applicant's present claims are not barred under the doctrines of res judicata or collateral estoppel.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ NATALIE PALUGYAI, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 22, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

SEAN SHOFFIT
LAW OFFICE OF LYSETTE R. RIOS
COLLINSON, DAEHNKE, INLOW & GRECO

SAR/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

1.	Applicant's Occupation:	Professional Athlete
	Applicant's Age:	27
	Date of Injury:	6/7/2005 through 3/27/2012
	Parts of Body Injured:	Neck, Back & Psyche
	Manner in which injuries alleged to have occurred:	Cumulative trauma
2.	Identity of Petitioner:	Defendant filed the Petition.
	Timeliness:	The petition was timely filed.
	Verification:	A verification is attached to the petition.
3.	Date of Findings and Award:	6/6/2023
4.	Petitioners contentions:	Applicant was allowed to bring his claims despite statutes of limitations; applicant's claims are barred by res judicata and/or collateral estoppel; reconsideration should be granted to include a finding each of applicant's claims are barred by the above defenses.

II

FACTS

Sean Shoffit (hereinafter "Mr. Shoffit") was employed during the period of 6/7/2005-3/27/2012 as a professional athlete by the Rogers Blue Jays Baseball Partnership dba Toronto Blue Jays Baseball Club, also known as the Toronto Blue Jays (hereinafter "The Blue Jays"). Minutes of Hearing, Summary of Evidence May 11, 2023 (hereinafter "MOH/SOE") p: 2; ll: 1-16.

The Blue Jays dispute injury arising out of and during the course of employment to the head, neurological system, neuropsyche, psyche, orthopedic injuries including neck, back, shoulders, elbows, hands, hips, feet and internal systems. *Id.* ll: 16-18. The Blue Jays were insured by ACE American insurance. Id. ll: 19-20

Case numbers ADJ12133512 (MF); ADJ13034023; ADJ13034024; ADJ13035034 were ordered consolidated at trial for decision on the issues identified in the Pre-Trial Conference Statement. The Blue Jays raised affirmative defenses of whether a prior settlement is binding pursuant to Labor Code Section 5001; statutes of limitations pursuant to Labor Code §§5404

through 5405; res judicata; collateral estoppel and asserting applicant was provided Reynolds notice and required notice of rights. The Blue Jays asserted these defenses applied to the consolidated cases.

The parties proceeded to full evidentiary trial on May 11, 2023 to resolve disputed issues post-Mandatory settlement conference. Findings and Award issued 6/6/2023 reflecting the following Findings of Fact material to The Blue Jays' petition:

1. Prior notices to applicant did not ensure applicant was aware of his rights to file his California cumulative trauma claims of injury to the leg, neck, head, neuropsyche, neurological system, psyche, back, shoulders, elbows, hands, hips, feet and internal system; and,
2. There is no prior, actual litigation sufficient to support collateral estoppel or res judicata.

Order issued deferring all issues not addressed at trial. Defendant filed timely Petition for Reconsideration of the 6/06/2023 Findings and Award asserting:

1. By the Order, decision, or award, the Board acted without or in excess of its powers.
2. The evidence does not justify the findings of fact.
3. The findings of fact do not support the order, decision, or award.

The undersigned acknowledges a scrivener error identifying the decision as "Findings and Award." Findings and Order were actually issued.

III
DISCUSSION

Statutes of Limitations of Labor Code §§ 5404 and 5405

The Blue Jays aver applicant was given timely notice of the right to file a workers' compensation claim in California. Petition for Reconsideration p: 5; ll: 17-18. The Blue Jays accurately summarize The California Supreme Court determined that the one-year statute of limitations does not apply when it is demonstrated that the employer knew of a possible industrial injury but failed to advise the employee his potential rights to workers' compensation benefits. *Reynolds v. WCAB* (1974) 12 Cal. 3d 726, 39 CCC 768. *Id.* p: 6; ll: 9-12.

The Blue Jays also acknowledge "(T)he (C)ourts have concluded 'that an applicant will not be charged with knowledge that his disability is job related without medical advice to that

effect unless the nature of the disability and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability'" citing *City of Fresno v. Workers' Comp. Appeals Bd.* (1985) 163 Cal. App. 3d 467, 473. Id. p:10; ll: 19-23. The *City of Fresno* court concluded: "Under these circumstances we conclude there is substantial evidence to support the board's decision that applicant was not chargeable with knowledge that his disability was work related. Applicant did not have the training or qualifications to recognize the relationship between the known adverse factors involved in his employment and his disability. Applicant's expression of the belief, shared by most disabled employees, that his employment caused his disability does not mandate a contrary conclusion." *Id.* at 473.

The undersigned recognizes Mr. Shoffit's credible, unrebutted testimony as well as a preponderance of evidence in this case. It is consistent with facts upon which *The City of Fresno* court decided its case. The undersigned assesses Mr. Shoffit is also not chargeable with knowledge his California disability was related to California in the jurisdictional sense, a much greater challenge to someone lacking necessary training and qualifications to recognize the relationship. Mr. Shoffit's credible testimony includes the nature of his disability and training. He went to high school and college to play baseball, then played professional baseball for the Toronto Blue Jays through March, 2012. MOH/SOE p: 7; ll: 8-11. He played for the Blue Jays Minor league affiliates, suffering injuries to multiple body parts during playing for it. Id. ll: 16-20.

Mr. Shoffit received treatment from the Blue Jays but was not notified that he could pursue a workers' compensation claim at the time it was provided. Id. ll: 20-25; p: 8; ll: 1-2. It was years after his career when he read comments from other players, after visiting a website with ex-California players on it, that he first knew maybe he had a California workers' compensation claim, then reached out to learn from his current attorney he could file a California claim. MOH/SOE p: 8; ll: 9-11; p: 10; ll: 5-8.

The record reflects insufficient evidence Mr. Shoffit knew he had a cumulative trauma claim before retaining counsel. It further reflects Mr. Shoffit lacked training, intelligence and qualifications such that he should have known he had a California workers' compensation cumulative trauma or any claim over which California has jurisdiction.

The record reflects applicant was provide[d] with notices regarding California workers' compensation rights and remedies by The Blue Jays. Exhibits D-F; P-X; MOH/SOE p: 10; ll: 12-

25; p: 11; ll: 1-8. However, it is clear the notices are general in nature. None reflects a definition of cumulative trauma. None appears clearly related to any California based injuries and Mr. Shoffit was given none at the time of a Florida settlement.

It appears clear from the record The Blue Jays routinely provided general California workers' compensation notices to applicant under various general circumstances, mostly at home before training camp or during spring training camp when "(w)e were like a herd of cattle" and "(w)e signed some paperwork." MOE/SOE p: 9; ll:16-17.

The court in *Reynolds v. Workers' Comp. Appeals Bd.* (Cal. Nov. 4, 1974), 12 Cal. 3d 726, 117 Cal. Rptr. 79, 527 P.2d 631, 1974 Cal. LEXIS 259 made clear the purpose of California workers' compensation notice is to protect and preserve the rights of an injured employee who may be ignorant of the procedures or, indeed, the very existence of the workmen's compensation law. Since the employer is generally in a better position to be aware of the employee's rights, it is proper that it should be charged with the responsibility of notifying the employee that there is a possibility he may have a claim for workmen's compensation benefits. *Id*. 12 Cal. 3d 726, 729. Mr. Shoffit did not receive sufficient notice to protect and preserve his rights as an injured California employee who was ignorant of the procedures and the very existence of the California workers' compensation laws affording him jurisdiction over those injuries. Retention of Florida counsel and a Florida settlement do not abrogate the California Supreme Court legal standard of notice or recognition of its purpose(s).

The Blue Jays have not carried its burden of proving Mr. Shoffit's claim is barred by the statutes of limitations found in Labor Code §§ 5404 and 5405. Therefore its Petition for Reconsideration should be denied.

Res Judicata and Collateral Estoppel

The Blue Jays assert "the Florida settlement resolved all claims the applicant might have against the Blue Jays for industrial injury." Petition for Reconsideration p: 14; ll: 14-16; Defense Exhibit J. EAMS DOC ID: 43994849 and Exhibit M. EAMS DOC ID: 43994848. Emphasis added.

The affirmative defenses of res judicata and collateral estoppel require disputed issues to be actually litigated in a former proceeding. *County of Sacramento Sheriff's Dep't v. W.C.A.B. (Keillor, Tracie),* 86 Cal. Comp. Cases 845, 846 (Cal. App. 3d Dist. August 6, 2021). The undersigned has found a Florida settlement under Florida laws passed by the Florida legislature of

Florida workers' compensation rights does not meet the legal element of "actually litigated" as it relates to disputes over Mr. Shoffit's California workers' compensation claims and rights. The Blue Jays settled it rights to litigate any issues sufficient to meet res judicata and collateral estoppel standards in this matter by entering into a Florida settlement.

The Blue Jays avers "a plain reading of the Florida agreement," its terms and Mr. Shoffit's representation by Florida counsel in reaching that agreement support its affirmative defenses of res judicata and estoppel. However it cannot for the purposes of these defenses. The document reflects a settlement, not a decision post-evidentiary hearing or trial on the merits of either party's claim(s).

A preponderance of evidence reflects the doctrines of collateral estoppel and res judicata do not apply to applicant's claims lacking necessary preponderance evidence to support the legal elements required. The Blue Jays Petition for Reconsideration should therefore be denied.

RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Reconsideration be Denied.

Dated in Santa Ana on June 27, 2023

HON. DAVID H. PARKER

Workers Compensation Judge